

## Teaching Transactional Business Law through Campus and Community Partnerships

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**PROFESSOR HEMINWAY:** Hello, everybody, thank you very much. As everyone is getting seated, I am super honored today to be able to present to you with my colleague, Brian Krumm, whom I highly respect. He basically has made our business clinic what it is, and we collaborate on a bunch of things.

It was in connection with some things that we were doing this past year that we suddenly realized that we were effectively doing the same thing in different settings in the same law school. In short, while we teach in different parts of the law school program and may use different instructional methodologies, we both use our non-law school peers on our campus and folks from off-campus in the community to help in our teaching. I am principally a doctrinal professor, but I frequently teach doctrine, theory, practice, and leadership using simulations and other practical skills methods. My teaching often includes parts of our business transactions concentration,<sup>2</sup> which I will later reference. In this session, Brian and I thought that we would share the different ways in which we are using these people from outside the law school in our teaching to help our students get a more realistic approach to what they are learning in transactional business law courses.

Part of our motivation is the NextGen Bar. If you go to the NextGen Bar website,<sup>3</sup> on the left-hand side of the home page they have listed foundational concepts and principles. And on the right-hand side, they have listed foundational skills. These concepts, principles, and skills are the focus

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<sup>1</sup> Rick Rose Distinguished Professor of Law, The University of Tennessee College of Law. New York University School of Law, J.D. 1985; Brown University, A.B. 1982. I am grateful to Brian Krumm for joining me in offering his insights on teaching with campus and community partners in the conference session transcribed here. The transcript has been edited for fluency and to omit banter with the live audience.

<sup>2</sup> *Concentration in Business Transactions*, <https://law.utk.edu/admissions/degree-programs/concentrations/business/> [https://perma.cc/USJ8-NKFJ].

<sup>3</sup> *NextGen Bar Exam of the Future*, <https://nextgenbarexam.ncbex.org/> [https://perma.cc/AG2E-LB73].

of the NextGen Bar exam. A lot of what Brian and I are doing in our teaching hits on these points of emphasis. We can feel proud that we have already started sort of down the road of teaching in a way that is helping to our students to prepare for the NextGen Bar, even though it is not here yet (and even though I do not yet know what Tennessee is going to do about adopting the NextGen Bar.

The premise of this presentation is super simple: that transactional business law can be taught in ways that are meaningful and that use the individualized resources that law schools have on their campuses and in their communities. Many of us invite local alums into our classrooms to help educate our students, or our schools employ local practitioners who are teaching as adjuncts. That is great. Sometimes we even co-teach with local alums and bar members. But what we are talking about in this presentation is using these available human resources in different ways. Moreover, significant, useful human resources that we have on our campuses are sometimes in other units. So, today we are going to give you a few examples from our work. We hope that after this presentation you will look more closely at the resources that you have available in your backyard to assist in your teaching.

To start, I will offer some background—introducing you to The University of Tennessee, Knoxville (which we often refer to as “UT”) and The University of Tennessee College of Law (sometimes referred to as “Tennessee Law”). So, who is UT? Who are we at The University of Tennessee College of Law?

UT is a flagship state university campus with a Division I National Collegiate Athletic Association (“NCAA”) athletic program. This status gives us certain distinct advantages. We have a broad-based undergraduate and graduate program, and we have embedded lawyers all over the campus in various academic and non-academic units. We may not see them a lot. They often are hidden to us unless we are working with them on campus projects or using them in some way in the law school’s work. For example, as the

interim director of the law school's professional leadership institute,<sup>4</sup> I worked with a member of our Advisory Board who is a lawyer embedded in the campus's College of Communication and Information. I also know lawyers who teach in the history department and the political science department in our College of Arts & Sciences and at the Haslam College of Business. Some of these lawyer-educators are also lecturers at the law school, but many fly under the radar because we do not know that they are there. So, look around you! you may find someone who has a skill set you have been looking for or may find useful in your teaching.

We also happen to have an incredibly engaged, loyal alumni base at Tennessee Law that serves as another potential teaching resource. Our alumni are donors. They are in our classrooms. They come twice a year to actually meet with our dean and give him advice. These are people who, if you ask them, say they would love to have more student contact. And if you ask the students, they would love to have more lawyer contact. There is a beauty in all of that. And I use the knowledge of that—knowledge I have gained by looking and asking around in our own backyard.

My teaching principally involves courses in our transactional business law center. That center, the Clayton Center for Entrepreneurial Law,<sup>5</sup> is one of the reasons why twenty-three-and-a-half years ago I signed on to be a law professor at The University of Tennessee College of Law. Tennessee Law was an early adopter of transactional business law education. After my arrival, we were able to recruit Brian, who was teaching for us a little bit as an adjunct, to the full-time faculty. The backbone of our transactional business law center is people who have actually practiced transactional business law for significant periods of time (like me and Brian).

As I earlier mentioned, our transactional business law center offers a concentration program that predates my arrival at Tennessee in 2000. You can go online and see the course requirements and progression. The

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<sup>4</sup> *Institute for Professional Leadership*, <https://law.utk.edu/programs/leadership/> [https://perma.cc/Q8Q9-P775].

<sup>5</sup> *Clayton Center for Entrepreneurial Law*, <https://law.utk.edu/programs/clayton/> [https://perma.cc/8QTZ-BBMB].

concentration in Business Transactions is an important part of what we do. Obtaining certification of the completion of the concentration is important to some students, but we have students that do not take every course in the concentration. Some of these people take almost all the required courses for the concentration. Some students note that they use it as a tracking mechanism for the legal doctrine and skills that one would want to have as a competent transactional business lawyer.

We also have, as earlier noted, a professional leadership institute at Tennessee Law. In some law schools, leadership education is formally integrated with or intersects with the business law program. In our law school, it is not. Leadership is very interdisciplinary. I think of it as interstitial—a sort of thread that runs through and connects the rest of our curriculum. Nevertheless, we do have a leadership course, Role of the General Counsel, that is directed toward transactional business law students, especially those who know they might want to work in-house someday. The leadership courses in our curriculum provide a helpful support network for all of what we do at Tennessee Law.

Brian will spend time talking about this at greater length, but at UT we also have a campus center for entrepreneurship and innovation. Brian and I are both research fellows in that center. We also have a university research park that is super close by, easily accessible by car. And we have a business clinic that I have already mentioned, which includes a trademark clinic. This is what I see when I look around at who we are at UT and Tennessee Law. As you consider the possible use of campus and community partners in your teaching, you also might want to take note of some of the same things about your own campus and institution.

With that description of UT and Tennessee Law as background, I will offer several recent examples of Campus and community engagement in my teaching.

Our NCAA Division I program includes wonderful Lady Vol and Men Vol teams that we like to support. So, in teaching or first-year Transactional Lawyering Lab class last year, I decided that I would do include

two sessions on name, image, and likeness (“NIL”) arrangements, because students were asking: “What is this NIL thing?” To introduce my 133 students to NILs, I invited into my classroom the woman from the UT athletic department—a lawyer—who was instrumental in putting our initial campus NIL policies into place.

She did a wonderful job leading the class session. Students were rapt and in a way that they were not when I was teaching. She was young and using her law degree in a novel and creative way. She was talking to them about athletics—including football—something that is a reason a lot of UT undergrads stay on to seek graduate and professional degrees on our campus. Football is super big for many of them. In short, she was speaking to a bunch of people who were engaged and interested.

Moreover, NIL a new thing. The students were reading about it in the newspaper. There has been a lot of legislation, and there has been litigation.<sup>6</sup> And there are stories about athletes making huge amounts of money (or making no money after going through significant effort).

Preparation for the class meeting was relatively simple. I gave the guest speaker a little bit of guidance on my goals, what we had already talked about in the course, and what the students’ overall background with the

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<sup>6</sup> Months after the Transactional Lawyering Lab course concluded, the NIL picture at UT got significantly more complicated. In January 2024, after this presentation was given, the Chancellor of The University of Tennessee, Knoxville issued a public statement reporting that the NCAA was pursuing allegations against UT relating to its NIL program. *See, e.g.,* Teresa M. Walker & Ralph D. Russo, *Tennessee chancellor rips the NCAA as a ‘failing’ group pursuing untrue allegations*, AP (Jan. 30, 2024), <https://apnews.com/article/tennessee-nil-ncaa-f8cd95db8717f8f6ae3d0dc1112ea186>. It was later reported that the Attorneys General of the State of Tennessee and the Commonwealth of Virginia had sued the NCAA asserting that the NCAA’s ban on the use of NIL collectives in recruiting violates federal antitrust law. *See, e.g.,* Ralph D. Russo & Teresa M. Walker, *Tennessee, Virginia AGs suing NCAA over NIL-related recruiting rules with Vols under investigation*, AP (Jan. 31, 2024), <https://apnews.com/article/tennessee-lawsuit-ncaa-recruiting-violations-nil-df83bc5b39c46476ea1682a96c5d5a2f>. In February 2024, a federal district court judge in Tennessee preliminarily enjoined the NCAA from enforcing the ban. *Tennessee v. Nat’l Collegiate Athletic Ass’n*, No. 324CV00033DCLCDP, 2024 WL 755528 (E.D. Tenn. Feb. 23, 2024).

subject matter had been. The students had already taken Contracts I and were in Contracts II at that time.

This NIL foundation class was the beginning of a two-class NIL unit in the Transactional Lawyering Lab course. It proved to be very effective to have an embedded lawyer from another campus unit (here, from athletics) do the preliminary teaching on this subject. After all, she was an expert. But I envisioned the second class on NILs as a drafting simulation. I had to figure out how to get drafting experience to 133 students in a class that only runs for half a semester in two-hour weekly increments.

Eventually, I came to the thought that I could use our COVID-19 Zoom teaching and learning experience as a positive and invite drafting facilitators to join the class over Zoom to lead small groups in my planned exercise. I invited Brian and other Tennessee Law teaching colleagues to join us as facilitators. I also reached out to a bunch of transactional business lawyers that I knew from across the state and asked them to be facilitators. This involved advance planning. It was helpful I serve on the executive council for our business law section in the Tennessee Bar, introducing me to many business lawyers over the last twenty-three-and-a-half years.

The idea was to get the students to work in groups of about ten with a practicing lawyer who knows something about contract drafting (but not necessarily about NIL contracting) in reforming an NIL agreement. I gave email instructions to the group of lawyers, along with an actual NIL agreement that had been redacted and a form of NIL agreement for a specific firm that I found online (one that was just a blank form).<sup>7</sup> The students also were given the two agreements—the redacted agreement and the blank form—with instructions on how to prepare for class.<sup>8</sup> After an introduction

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<sup>7</sup> The instructions and forms were made available to attendees at the session and can be obtained from Joan Heminway, [jheminwa@tennessee.edu](mailto:jheminwa@tennessee.edu), on request.

<sup>8</sup> The written instructions in the syllabus were as follows:

Please review . . . both the License Agreement (Redacted) and Positivity Alkaline Water College Athlete NIL Agreement posted on the TWEN site. Compare the terms of these two agreements with each other and with the materials read for our February 1 class session.

by me, each group was assigned to a Zoom breakout room with a lawyer to talk through possible proposed changes to the blank form of agreement based on the redacted form of agreement from the prior NIL deal. The breakout sessions were about a half an hour or forty-five minutes in total. Then, I brought everyone back into the main Zoom room together. For the remainder of the class meeting, we talked through some of the things that they had observed. I also arranged through my teaching assistants to post written output (marked drafts and notes) to our course management website on TWEN. I reviewed the postings, and, at the outset of the next class meeting, I called out some interesting things that I noticed from the outputs. In their final course reflection papers, the students overwhelmingly noted that this class—these two classes—were what they liked best in this course.

You might think about using your campus or community partners in a similar way for a simulation exercise. How might you use your connections with the legal community to advantage in your teaching? If you are new to your school—new to the community—this is going to be harder, of course. But perhaps you can ask for collaboration from some of your more senior colleagues. The main idea is to draw on the vast expertise and diverse experiences of the transactional bar.

My second example has to do with employing one of my former students to illustrate certain practice points in my Business Associations and Corporate Finance courses. The former student is an entrepreneur whose business produces popular “Volwear”—Tennessee Volunteer logo wear—t-shirts, polos, ties, hats, and socks. The business was born in a classroom at

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For our in-class work, *you will assume the role of an attorney representing a student athlete* who is considering entering into an NIL agreement with Positivity Alkaline Water LLC to endorse its product. Please identify three or more suggestions you would make to alter the Positivity Alkaline Water College Athlete NIL Agreement as *legal counsel to the student athlete*. Ask questions in the TWEN General Discussion forum. You may also consult with colleagues in or outside the class in engaging with this assignment. Consider both deletions and additions of provisions to the existing agreement as well as alterations to the text of the existing provisions. Come to class prepared to use those suggestions in a meeting with a senior supervising attorney who is preparing to have a conversation with Positivity Alkaline Water LLC about the agreement.

Tennessee Law. It is an amazing, thriving business. Our bookstore sells a lot of their merchandise. You are likely going to think this Tennessee Law alum's contribution to my courses is somewhat odd. But it has been powerful for my students.

I highlight today my use of this Tennessee Law alum in my Corporate Finance course. He comes into my Corporate Finance classroom to tell my students (among other things) that he never hired a corporate finance lawyer to finance his business, even when he looked at alternatives like granting stock options. Two people had an equity stake in the business in the beginning. He later bought out his partner. None of that was done with an outside lawyer, and he freely admits that he is not sufficiently competent as a lawyer to advise himself on matters of corporate finance.<sup>9</sup>

In essence, during his classroom visit, this entrepreneur tells us why he might not retain their services. But in connection with that he also says, "Here's when I *would* hire you." And he specifically talks about hiring an intellectual property lawyer after he made an intellectual property mistake relating to licensing rights. He offers specific reasons also for why he hired a specific person to help get him out of that mess--someone with whom he still works to this day. He lists a bunch of useful things in terms of the cost efficiency and in terms of the required expertise that could not be had in some other way. Also, the person he hired was a law school connection of his. There was a trust relationship there that he did not have with other intellectual property licensing lawyers.

The messages this alum brings to my classroom make a strong impression on my students. They understand from his stories that they have to actually earn their client relationships. Some of them are going into Big Law, and maybe they will not immediately need to bring in clients. But graduates do hang out their own shingle, sometimes right after graduation. What I am able to do through this classroom guest is to capitalize on the story of a unique and relatable entrepreneur (who happens to be a licensed

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<sup>9</sup> Having said that, he is a great businessman and a wonderful leader. He is very inspirational for the students, which is another reason why I love having him in my classroom.



lawyer and to have been a former student) to teach students about the lawyer-client relationship. Also, we have a bunch of students who go into business for themselves, and his words have even more meaning for them.<sup>10</sup>

My Corporate Finance class is smaller. It is capped at twenty students. The students have the opportunity to relate to him personally. He will tell them that he has organized his own business entity. He wrote the documents himself for an S corporation and did the filing himself. He funded the business on his own, with family help. He operates the business, even today, without outside legal counsel (other than his intellectual property counsel). He is a member of the bar.<sup>11</sup>

I do hope from this that you can see how you can use alumni or friends or other people from the community in your classroom. You also may want to consider inviting in entrepreneurs to talk about their experiences in hiring legal counsel. We are truly blessed to have a wonderful entrepreneurial community in Knoxville that we can capitalize on (although my entrepreneur's business is located in Nashville).

I will leave you with this one final related thought, and then I want to turn the program over to Brian so he can talk about his side of this campus and community engagement puzzle. Really, for me, a lot of the impetus for campus and community engagement comes from a simple observation: students do not think about clients in meaningful ways in a doctrinal classroom, even though they have to learn about the lawyer-client relationship in their Professional Responsibility. And the client relationship is central to so many of our rules of professional conduct.

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<sup>10</sup> In a featured program at the 2023 National Business Law Scholars Conference held at Tennessee Law, we highlighted this trend toward lawyer entrepreneurship in a featured plenary panel.

<sup>11</sup> He likes to portray his bar passage as something of a miracle, classifying himself as the number two lowest person in his class in terms of grades. His humility and candor are very winning.

Nevertheless, students are often thinking more about themselves as they navigate those rules.<sup>12</sup> If you can bring an entrepreneur into the classroom, and if you can replicate some of the things that Brian and other clinicians do in their teaching, you can give students that client perspective that may help them learn skills that they are going to need for the NextGen Bar and beyond in terms of client advising and counseling, as well as client management. These two NextGen Bar foundational skills are emphasized by the campus and community partnerships Brian and I have forged. So, Brian, I will finally let you speak now.

**PROFESSOR KRUMM:** Thanks, Joan. What I would like to discuss today is how the Tennessee Transactional Law Clinic works with campus and community partners. We are fortunate in East Tennessee to have some of the finest research facilities in the country. This first slide provides just a handful of the partners that we have in the community that help provide us with clients as well as technical assistance in a lot of areas. I didn't have enough room to put all the partners on his slide, but I put as many as I could. I want to talk about two primarily: Innovation Crossroads<sup>13</sup> and the University of Tennessee Spark Innovation Center.<sup>14</sup>

These are two really interesting programs. Starting new energy-related technology companies can be challenging, and that's one reason the number of energy startups has declined significantly over the past decade. Innovation Crossroads, a Lab-Embedded Entrepreneurship Program, is supported by the U.S. Department of Energy's Advanced Materials and Manufacturing Technologies Office, Building Technologies Office, Office of Electricity, Office of Science Advanced Scientific Computing Research program, and the Tennessee Valley Authority that leverages Oak Ridge

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<sup>12</sup> This can be true when students are looking for jobs, too. I try to encourage them to think about promoting themselves by focusing on what the employer wants, not about what the employer can do for them. In both cases—the lawyer-client relationship and the employment relationship—I am asking the students to look at things from a different perspective.

<sup>13</sup> *Innovation Crossroads*, OAK RIDGE NATIONAL LABORATORY, <https://innovationcrossroads.ornl.gov/> [https://perma.cc/FD7W-JWNZ].

<sup>14</sup> *Spark Innovation Center*, THE UNIVERSITY OF TENNESSEE RESEARCH PARK AT CHEROKEE FARM, <https://www.tnresearchpark.org/spark/> [https://perma.cc/ME9G-KG2C].

National Laboratory's unique scientific resources and capabilities and connects the nation's top innovators with experts, mentors, and networks in technology-related fields to take world-changing ideas from research and development to the marketplace.

Innovation Crossroads is a two-year program for fellows focusing on energy and advanced manufacturing technologies. Through an annual national call and competitive stage-gate process, top entrepreneurial-minded fellows are selected to join the program. Selected innovators receive a fellowship that includes a personal living stipend, along with health insurance and travel allowance, a substantial grant to use on collaborative R&D at ORNL, and comprehensive mentoring assistance to build a sustainable business model.

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The following YouTube video provides insight into the value this program has to the growth and commercialization of hard-tech startups.<sup>15</sup> The University Tennessee College of Law's Legal Clinic has worked with three of the companies presented in the video.: Neptune Fluid Flow Technologies; Qubit Technologies; and SkyNanno Technologies by providing business legal services. For example, we created business entities for each of these companies. The students have advised them on how to best protect their intellectual property and drafted non-disclosure and material transfer agreements. The student attorneys have worked with some clients on corporate finance and securities matters. There has probably not been an area of business law that the clinic hasn't addressed during my tenure in the Clinic.

What the students find interesting is that while these scientists and engineers are technical experts in their field, they know nothing about the law. They know nothing about the processes that they need to operate within the university environment. For example, if they're receiving money from the Federal or State government, who owns the intellectual property? It's one of those things that they're not sure. Can they license the technology back from the university? Or if they're coming from another university and they're using intellectual property that was in that place, how do you negotiate licensing agreements and things of that nature? Now our students come in with a fairly good background in business associations, contract drafting, secured transactions, and corporate finance. But learning some of the soft skills and

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<sup>15</sup> *Spark Innovation Sizzle Reel*, UNIVERSITY OF TENNESSEE RESEARCH CENTER, <https://www.youtube.com/watch?v=afXVzCRPqdY>.

competencies are what we try to do with the clinic. We're transitioning from the classroom hypotheticals to dealing with real clients with real legal problems. And it's amazing how while they might have a great foundation in all these doctrinal courses, putting all that knowledge together in order to interview a client is not as easy as you think.

We have a good program where we have a seminar session which teaches students how to do interviewing and counselling. We have supervision meetings weekly. We have firm meetings where the students will talk about their clients, talk about difficult issues that they're having and have a brainstorming session of sixteen people. Ok, we actually have two professors working in the transactional clinic: myself and Eric Amarante. I focus on high tech clients, and Eric does community development and nonprofit organizations, and we give them exposure to both types of clients. Some of the people who are coming into the clinic don't have a deep IP background. but I try to help them feel comfortable with dealing with IP issues. They don't have to be patent agents to help them understand how to advising protecting the client's intellectual property. They don't have to be trademark specialists, but getting an exposure to things that they're going to be dealing with in the future is critical. And it's interesting, you know, just like in securities matters, you don't have to be a securities lawyer, but you should realize when you're in the danger zone with securities. You need to understand when first to file. You need to know what happens if you publicize your technology before you file for a patent. You know, recommendations for advising clients and about some of the danger items that could cause some malpractice issues in the future. These are things that they haven't been exposed to before, and I try to scare them. I try to scare them about everything so that they have a sense that well, this is serious. It's one of those things that if they're not scared of making a mistake, they just might just nonchalantly make a mistake. So, it's a really important and I love this sort of practice a lot.

When I first came to UT, I was teaching Secured Transactions and BA. I can't imagine having to do the same thing every year for a number of years. I'm learning something all the time. It's exciting for me to learn about all the new cutting-edge technologies that we are exposed to and working

with students to address the client's legal issues. I was recently placed on the university's Artificial Intelligence task force. I helped develop the policy for name, image and likeness policy for the athletic department. You get exposed to a lot of different colleges, a lot of different technologies within the colleges and people know you. So, it's been a great experience for me, and I try to give that same great experience to the students. Now, what I try to focus on, though, is what skills and competencies that these students are learning. And these are just a handful of the things that we try to impart and hone as they go along, like identification and evaluation of client's goals. Recognizing that the client might not have a business plan or they might have a business plan but they might not understand all the legal issues that go along with that business plan.

I can give you an example. We had a client called iCare, which was a collaboration between the nursing school and the engineering school to develop a health records management system.

The nursing school went out and tried to price what it would cost to buy a health records management system to train their nurses and it was prohibitive. So, they said, "Well, it's not that hard to develop." And so, the engineering school and the nursing school developed a health records management system that was later sold to Wolters Kluwer Health. We brought that entity from entity formation all the way through asset sale. It was a wonderful experience. Now, it took a three-year period to complete that client assignment and the students only got bits and pieces of it along the way, but they got exposure, working with our tech transfer department, with their local law firm, with Goldberg Kohn from Chicago, and Wolters Kluwer Health in negotiating the deal. And it was a great experience for the students.

Another client that we've had dealt was Floodlight Genomics. A professor in the College of Agriculture developed a process by which could analyze DNA at a lower cost and with higher accuracy than current methodologies. Now we don't have a geneticist in the law school so, we reached out to the firm of Merchant and Gould, and there was somebody in Minnesota that could understand the process and was able to determine that

it did not infringe on any existing patents, but the reality of it was that they suggested that we not patent it because it was something that, if you put it in a patent, somebody could take it back to their lab and use that technology because they were just providing results, and there would be no way you could detect that someone was infringing, so a patent could not be enforced. So, he's kept it as a trade secret. He's done very well and he's the type of person that gives away the results to fellow researchers across the country. So, he's making enough money to make it worthwhile, but really contributing to the efforts of other scientists. We've tried to help him scale up the process. He has bought robots to help him to automate the process. But he doesn't want to expand it in a way that most people would want to further capitalize such technology.

One other example we worked with the UT Medical Center with a group of researchers who developed a radio tracer that binds with amyloid proteins. Amyloid proteins are associated with certain cancers and so we helped them develop their business entity and material transfers and their agreements so that they could basically have other universities test out their methodology and things like that. And we had one student that said, "I don't understand the technology at all." And they said, "Well, guess what? We don't understand these documents at all. So we're relying on you." So it gives these students a level of confidence that they wouldn't otherwise have. And you know, I talk to a lot of the law firms that take my students and they say that that coming out of the clinic, having these types of exposures, put them a year to two years ahead of other similar students without that experience. So again, the types of competencies that we're looking for is thorough fact investigation. You know, I've been working with students just this past week on a simple entity creation issue and they don't think about the tax aspects. They don't think necessarily about the transition in the event that the founder dies. You know what you learn in in BA and other courses is just an overview and you have to kind of dig deeper. And so that's where the supervision meetings come in, to see if the students thought about this.

This week we had a particular client who was on disability, and he didn't want to make more money than loses his disability benefits. Well, you know, you can talk to them about "If you make more money. and you don't

need the benefits.” That’s one thing. But he had cancer. So, he wanted to make sure that if his business didn’t go well that he had some baseline income. Well these are things that are uncomfortable for students to talk about. But guess what? There’s a lot of things that I found uncomfortable, and I still do, talking to clients about. So, all these soft skills are important for students to learn accountability to the client. Again, some students will treat it like a normal class. “Okay, I’ve done the reading. I’m going through the motions.” And to encourage them to invest a little bit in the client, sometimes it’s hard and you have to be frank with them and say, “You know, you’re not really putting in the effort that you need.” Or the student will say “I called the client, or I’ve emailed them, and they haven’t gotten back to me.” Well, what have you done since then? How do you keep the project moving forward? And I’ll be honest with you. I give them a lot of work. I give them four or five clients. And the reason being is, transactional work sometimes have slow periods. You have to keep the flow going. And so they’re having to deal with competing projects and timing—all the things that you’ll find in practice.

Now going from the clinic to transactional competitions. I find these to be very important to the student experience. We’ve both participated in Law Meets, which is now defunct. But there has been some others. There’s some at UCLA, some at Duke, and some at Wayne State that we’ve participated in. We’ve done very well, but it gives the students a whole experience on both planning, drafting markup, and then a negotiation experience. Mark Mead back there and I both competed at The Closer. The Closer is a very unique type of competition where all the students get there on Thursday night. On Friday, they’re given a case file and told that they need to negotiate a deal the following day. The professor gets to work with the student for one day. But it’s all the student after that. So, it’s a wonderful experience and it can be very beneficial, too, because the winner wins \$5,000, which students are pretty intrigued by which I don’t blame them. Bobby Bramhall, he was the first winner of The Closer, and now he’s teaching for us. He was a professional baseball player before he came to law school. and now he’s teaching Name, Image and Likeness at the law school.



So, I just found out today that the ABA is going to have emergency acquisition competition. I suggest that if you have some interested students that you apply for it, because it's a wonderful experience. It's competition and training students that, unlike a mock trial where you want to win, the whole objective of a negotiation competition is for both parties to win. When students come through law school thinking like litigators, training them how to, you know, think like transactional lawyers is not always easy to do and this is a wonderful experience to help them go through again. Students tell me that they learn more about the transactional process through these competitions than they would sitting and reading cases in Mergers and Acquisitions. Again, preparing them to practice law and making them practice ready has always been the objective of our business law concentration.

**PROFESSOR HEMINWAY:** One of the things that we promised you all was some literature references. Here are three things that that, in particular, I was looking at and thinking about that relate to our themes today:

- *Defining Key Competencies for Business Lawyers*, 72 *BUS. LAW.* 101 (2016);
- Michelle M. Harner & Robert J. Rhee, *Deal Deconstructions, Case Studies, and Case Simulations: Toward Practice Readiness with New Pedagogies in Teaching Business and Transactional Law*, 3 *AM. U. BUS. L. REV.* 81 (2014); and
- Jonathan C. Lipson, *Doing Deals in School A Prof Talks About Teaching Transactional Law*, *BUS. L. TODAY*, September/October 2005, at 51.

If you have not read them, I can recommend them as both important and fun. Also, you can go to the publication website for *Transactions: The Tennessee Journal of Business Law*<sup>16</sup> and see all of the past proceedings of the Emory Law conferences hosted by the Center for Transactional Law and Practice. We are proud and pleased to be a partner with Emory in producing everything from the conference for this year as well. Of course, there are many more

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<sup>16</sup> *Home*, TRANSACTIONS: THE TENNESSEE JOURNAL OF BUSINESS LAW, <https://ir.law.utk.edu/transactions/> [<https://perma.cc/3KCY-9HL4>].

resources that could be highlighted, some of them written by those of you who are in the audience.

Overall, what our presentation speaks to is that we are looking to use our campus and community partners to teach a potentially broad range of skills. I am not sure either of us mentioned this yet, but for our transactional law competition team practices, we invite lawyers from the community to come in and help us prepare the students. That is another type of community connection that we have and use to our advantage in educating students.

The broad range of skills that can be taught through the various campus and community partnerships one could employ include: analysis; planning; drafting; negotiation; numeracy; advocacy; counseling; project management; developing and maintaining client relationships; and oral and written communication. For those of you who attend the Southeastern Association of Law Schools annual meeting and conference, I will note that I have been asked to organize a discussion group on numeracy for 2024. You can look forward to that!

Years ago, Michael Woronoff (who then was an adjunct at the UCLA School of Law and is a practitioner on the West coast)<sup>17</sup> and I did a session together for this conference, where his part was on numeracy. He asked that we stop making those common jokes about students coming to law school because they want to avoid numbers. And he talked about some ways in which he uses problems involving numbers in corporate finance, which is a class that he taught as an adjunct, to show the students they can successfully employ numbers in their work. I include a unit on valuation in my corporate finance class, and I usually invite in a valuation expert. That is another way in which I incorporate community partners into my classroom. Among other things, the expert guest talks about what it is like to work with an expert as a lawyer, as well as how we can make his job a lot easier and how he can make our job a lot easier through effective communication and what he is doing

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<sup>17</sup> Michael Woronoff, P.C., Kirkland & Ellis LLP, <https://www.kirkland.com/lawyers/w/woronoff-michael> (last visited April 4, 2024).

behind the scenes in using the valuation methods that we talk about in class. Numeracy is one of those things we really do not talk about enough.

By the way, if you have people that you would like to invite to your class to share their expertise and they do not want to lecture, you can interview them. It proves to be a handy way to get community members involved. You can even have a student interview them, with your guidance, in front of the class. There are several different ways of using campus and community members if you are inviting them into your classroom.

Brian mentioned project management. The need for project management skills—and the need for time management and the document management that is associated with effective project management—cannot be overstated. I had the distinct benefit this semester of teaching a course in our leadership curriculum that I innovated with one of our adjunct instructors that is called Small Group Communication for Lawyer Leaders. In business schools, they teach small group communication. We have not done that much (if at all) in law schools. And yet, if you think about it, almost all of what we do as lawyers is done in dyads or small groups (small groups being three or more folks)—whether we are engaged in client relations, in meetings, or whether we are operating within our own law office or other work environment. Even solo practitioners work in small groups with client and other lawyers. Also, you may need to use experts, for example. So how do you communicate in those environments effectively? How do you do that efficiently? How do you exercise leadership in that setting? These are matters that more law schools ought to think about teaching. We had a nice experience with our course this semester. We learned some things. I am happy to share our syllabus with folks.

I know Brian is constantly teaching small group communication and dyad communication in everything that he is doing, especially when he involves entrepreneurs. Am I right? Moreover, if some of you have worked, like I have, on a pro bono basis with artists, you learn fast that trying to communicate with people who are outside your field of endeavor is humbling. It is something that law students need to learn—that they are not always talking to another lawyer with experience in the same area of law.

Involving campus and community partners can help teach these communication skills. Brian, do you want to highlight anything more?

**PROFESSOR KRUMM:** It's fall break next week, and we have mid semester evaluations. And I ask each student to come in individually because they're working in pairs. And I ask "How's your experience working with your partner? Is there something that bothers you? Are you getting along? Are you sharing the working equally?" And it's amazing some of the things you hear come out. It's also a way of having them to reflect on, "How can you get along with them better in the event that they're not? What are you doing that's irritating them?" These are things that help them when they get into a firm resolve issues. If they're not getting along with one of the associates or partners it can help them think through it.

Another issue is are the things that you're working on interesting to you? Is there something else you would like to explore that we haven't explored? I typically have everybody do at least one trademark. The reason being in Tennessee, I think, like 70% of people go into a firm of one to twelve people. Okay, and if they're the only person who knows how to do a trademark. They have a skill set that nobody else has. They're not that difficult but there are some technical aspects of it that at least you should have somebody supervise you with the first couple.

**PROFESSOR HEMINWAY:** That's super. Absolutely. And I think we could pick any skill on any list and map it to different areas of law practice. Some of those skills are things we talk about a lot—planning and drafting, negotiation, advocacy, etc.

We also sometimes talk about areas of practice in an overly simplistic way when we talk about lawyering skills. Maybe that issue deserves some attention here. Sometimes, we lawyers divide ourselves into dispute resolution practitioners (or litigators) and the transactional practitioners. But much of what we do as lawyers may be neither. The lawyering task often involves counseling and advising, including on compliance, especially for transactional business lawyers. that advising occurs in house or for outside counsel in between transactions or in connection with ongoing, open

consultative engagements. Really, in my mind, there are four large categories of practice: dispute resolution, transactional work, counseling, and compliance, and so I am promoting this.

In addition to skills, there are some lawyering competencies and norms that we believe campus and community engagement can help teach and reinforce. They are:

- Relative formality
- Attentiveness to detail
- Self-awareness
- Cognizance of role
- Humility
- Self-direction

We will highlight aspects of these competencies and norms for you.

The informality of email and text messaging—and many clients are asking for text communication—creates issues some of them (intergenerational) in legal work settings. One of the reasons why we taught material on this subject in our small group communication course is that we have become aware that students were beginning, in their summer jobs, their email messages with “Hey” and worse yet “Yo.” The informality of these greetings was not making a good impression on lawyers with whom these students were working. To get a sense of how their communication is received and interpreted can be helpful to students and important to their professional development.

Formal writing conventions in certain contexts also may be just outside a student’s grasp. Generally, when you do a client or interoffice memo, what does that look like? How is it formatted? Does it have “To:” and “From:”? I have had to instruct many students that “Dear” is for letters (or, in some cases, email messages) but is not used in memos.

And what about attentiveness to detail? I cheer my corporate finance students on when they get anally compulsive about their drafting. I have them mark up a notice of redemption for a debt deal, and I held them to a high standard of detail orientation in the classroom component of that review. I included a hidden date problem in the assignment relating to a tight notice deadline in a leap year. They had to identify the notice issue and work it out. There are many ways that you can get your students to deal with attentiveness to detail. Bringing in other lawyers to highlight the importance of detail orientation may be more compelling. Like it or not, our credibility sometimes is not the same as that of other lawyers in the eyes of our students. For example, it helps to get lawyers from the community to explain, “I may screen you out of an interview process if you have inconsistencies or typos in your cover letter or resume. Why? Because how can I trust you to write a one-hundred-page merger agreement and make it as error-free as possible if you do not or cannot focus enough attention on two of the most important pages of paper in getting your first job out of law school to make them consistent and typo-free?” I had a conversation about a student’s cover letter and resume with a partner in a firm that hires from Tennessee Law a number of years ago in which he made that point forcefully.

Self-awareness can be built by having students engage in more self-reflection. When we work with community partners, when we are working in the clinic or in simulation exercises, or even just when we have a guest speaker in class, we can ask the students to reinspect who they are as a lawyer, and what it is they want to do. And that has to do with understanding their role with the client as well. Leadership traits like empathy and gratitude can be important in the practice of law. These traits are not necessarily on lists of topics that describe what we are teaching our students when we teach them transactional business law, including in settings involving campus or community partners.

I want to make sure that we have time for questions. Brian?

**PROFESSOR KRUMM:** One thing. It was really hard to do the business clinic on Zoom. Oh, yeah. But one benefit that came out of it was the use of Zoom in order to reach out to clients. Now, by the same token, I want students to

develop a relationship with their clients. And it's awfully difficult to develop a relationship through Zoom. So, it's one of those things that I also require the students to at least meet their client once in person, so that the relationship should solidify a little bit more.

**PROFESSOR HEMINWAY:** That's great—super point.

We are happy to take questions or comments now from anyone including comments on pedagogy.

**Audience Member:** Brian, you mentioned the transactional competitions. There's nothing, in my experience, that compares. They're an amazing experience. Brian, one of the important things to talk about is the amount of time that you put in as a faculty member and the number of students that get the exposure. We get one student to Waco every year and that's it. So, here's my point: I would encourage people to think about an internal competition of some sort. Lots of folks, including me, freely share the problems that they've used to people who reach out. So, it's not going to take long to put that together, or whatever. There are a lot of those problems "out of the box" that you can use now. Internally we started a different model last year. It reminds me of the Juniors throwing the Prom for the Seniors, and in your Senior year you get to enjoy the Prom. We have the 1Ls and the 2Ls help run the competition, and then they can participate in the competition as 3Ls. Leveraging that help and getting them involved that early makes them aware of transactions competition earlier.

**PROFESSOR KRUMM:** And of the things that I do is, I let a lot of people actually work on the problem and let them vote to see who's going to go negotiate. That way they get the experience of the drafting, the interviewing, and all that sort of stuff, and even some internal competition before they actually go to the competitions. Primarily, 2Ls basically serve as backup so that they can take the leadership roles the following year. Yes, it's great. Thank you. Anybody else?

**AUDIENCE MEMBER:** I love this NIL agreement exercise. If you can engage 133 students in something hands-on like that—it's amazing. Do they have

the competing goals of the parties, or are they looking at it from both sides? Do you divide up the groups in that way? Do they have some kind of like rubric? Like some kind of framework for things to look for? Or are you leaving it to the small group facilitators to guide that conversation more without trying to impose consistency across their criteria?

**PROFESSOR HEMINWAY:** Great questions. I give them all the same side. They are all representing the student who has been given this agreement and is considering representing the water company, a specialized water company, and its product in the market. I left the details of what might be included to the lawyer facilitators, suggesting that they compare and contrast based on their contract drafting and negotiation experience to prepare themselves for the facilitation role. Through that, they were easily able to see where there were some issues. In the past, I have used an indemnification provision, and a similar kind of exercise, but not involving the community partners. I orally instructed the students to look for certain things that they learned through the NIL foundation class. The speaker in the NIL class gave us a great rubric in class that preceding week for what students should be thinking about caring about in NIL deals and what kind of advice a lawyer should give them.

One issue that came up is social media clauses. I do not know if you've had a chance to look at the provisions in an NIL agreement and think about how they can go awry with students who, you know, are out, maybe drinking a little bit, at night. They may not be thinking about what they are posting on (I still call it Twitter, but . . .) X or Instagram. They may not be attentive to the pictures they are showing of themselves, or the text they are writing and whether it violates their NIL agreement. These also are problems that our NIL expert described. I shared her notes from her lecture with the practitioners if they wanted them. Our expert also raised the issue of brand conflicts. We are a Nike school right now. We used to be in Adidas school. A student may run across the problem of representing two potentially conflicting brands, one on the court as a college athlete and one off the court as part of an NIL deal. Those issues can be anticipated and need to be worked out. There are so many ways she described that things could go awry that relate to NIL agreement provisions. My hesitancy in offering the exercise to 1L students, though, is that they had not finished Contracts II when the



exercise took place. Also, they haven't taken our course on contract drafting because it is not a first-year offering. It is an upper division elective. But the Transactional Lawyering Lab was an exposure class. The learning objectives for the course were limited to exposing students to transactional business law in a variety of contexts, and contracts is only one of them. It is the most obvious one for them. So, we do it early in the semester. However, we also did a day on intellectual property and a day focusing on torts and criminal law issues relative to transactional business law. That was where the FTX, Theranos, and Enron came in. I am a securities lawyer, a corporate finance lawyer, by background. So, I was always trying to prevent my clients from committing those kinds of fraud, and I was reasonably successful in my fifteen years of practice in doing that. Bottom line, in this course, I was not trying to get the students deeply into the skills. I was trying to expose them to what the lawyers do. A colleague and I designed the course so that the students are led to understand that transactional business law is not just about planning, drafting, and negotiating contracts. It is about a lot more than that. Transactional business law involves all of the areas of law that they are learning about in the first year.

We use the 2009 Disney-Pixar movie *UP* to teach the class on property law and business transactions because there is real property prominently featured in the form of the house. And there is personal property if you think about all those little doodads in the house. And we also can then cover intellectual property. We have a relationship with the General Counsel of Disney's Pixar unit. He comes to our class to talk about how the *UP* house got built in real life by a developer. The story of how the permission was afforded to that developer to build the house is an interesting one that involves the question: "Do we really need a contract, or do we not?" Brian earlier illustrated that in referencing the client who is protecting his property with a trade secret protection instead of patent protection.

**PROFESSOR KRUMM:** Actually, one case study is the 2022 Closer competition. It has a perfect NIL problem where there's a video that sets up the issue. There is a draft contract. By the by, they get the business's markup and the markup by the lawyer for the student athlete. And there are issues: How do you know how much pay somebody for Instagrams or Youtube

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posts? Do you look it up? What are other influencers making for basically the same thing? So, it really was an interesting competition. It's something that I actually use in class. I think we're actually at time, so we should probably call it quits but thank you. Yeah, thanks so much.